



Nov. 7, 2016

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-43; Accessibility of User Interfaces, and Video Programming Guides and Menus, MB Docket No. 12-108

Dear Ms. Dortch:

On November 3, 2016, Ross J. Lieberman, Senior Vice President for Government Affairs, American Cable Association (“ACA”), Mary C. Lovejoy, Vice President for Regulatory Affairs, ACA, and the undersigned met, respectively, with Matthew Berry, Chief of Staff to Commissioner Pai; Robin Colwell, Chief of Staff and Senior Legal Advisor, Media to Commissioner O’Rielly; and David Grossman, Chief of Staff and Media Policy Advisor to Commissioner Clyburn regarding ACA’s positions with respect to the proposals under consideration in the above-captioned proceedings implementing the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).¹ On the following day, ACA representatives met separately with Marc Paul, Legal Advisor and Jennifer Thompson, Special Advisor and Confidential Assistant to Commissioner Rosenworcel, and Holly Saurer, Legal Advisor, International and Consumer & Governmental Affairs to Chairman Wheeler to discuss the same topics.

ACA representatives began each meeting by highlighting some key differences between ACA members, who are small and medium-sized multichannel video programming distributors (“MVPDs”) and the largest MVPDs that are relevant to these proceedings. The most relevant is that half of ACA members serve fewer than 1,000 subscribers, whereas the four largest MVPDs each serve more than 10 million subscribers. Another important difference is most ACA members have 10 or fewer staff members, including the owners, each of whom has varied, and by necessity overlapping, responsibilities within the organization, while the largest MVPDs each have tens of thousands employees, most of whom have very specific responsibilities. Finally, unlike the largest

¹ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 31 FCC Rcd 2463 (2016) (“2016 Video Description NPRM”); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Comments of the American Cable Association (filed Jun. 27, 2016) (“ACA Video Description Comments”); Reply Comments of the American Cable Association (filed Jul. 26, 2016) (“ACA Video Description Reply Comments”); *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 13914 (2015) (“2015 User Interface 2nd FNPRM”); *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Reply Comments of the American Cable Association (filed Mar. 7, 2016) (“ACA User Interface Reply Comments”).

MVPDs that have large operating budgets and bargaining leverage over most of their hardware, software, programming, and other vendors to obtain customized products and services, small and medium-sized providers generally have small operating budgets and must generally purchase goods and services “off the shelf” from their vendors.

Notwithstanding these key differences, which provide numerous competitive advantages to large MVPDs, many smaller providers believe they can and do effectively compete in the market by offering services that are better tailored to their community’s needs and by offering superior customer service. Owners and employees of ACA members do this not only because it’s good business, but because they often live and work in the communities they serve and consider providing good service to be a neighborly act. For the staff of small cable operators, customers are not merely numbers on a spreadsheet – they are neighbors, friends, and family, and providing poor customer service can reflect negatively on them in their community, which is a consideration that most call center employees of larger MVPDs need not worry about.

ACA focused its remarks on three aspects of the Commission’s proposals to expand video programming distributors’ obligations with respect to providing video described programming: (i) adoption of video-description specific customer service requirements; (ii) a requirement that MVPDs provide a centralized list of programming that is available with video description; and (iii) a requirement concerning delivery of multiple audio streams. In addition, ACA briefly touched upon the potential requirement that video on demand (“VOD”) programming include video description if it has been previously carried by that MVPD with video description. Lastly, ACA discussed the Commission’s separate proposal for imposing mandates on apparatus manufacturers and MVPDs to ensure that consumers can readily access user display settings for closed captioning under the Television Decoder Circuitry Act.

Video Description NPRM

Customer Service. While ACA appreciates the Commission’s efforts to ensure that MVPDs respond in a timely manner to customer inquiries about the availability of or access to video description services, it urges the Commission to tread lightly in imposing the same prescriptive customer service rules on small and medium-sized MVPDs as those imposed on large MVPDs. ACA noted that smaller MVPDs provide customer service in very different ways than large MVPDs, making inappropriate one-size-fits-all rules dictating who, what, when, and how customer service should be provided. For example, large MVPDs have customer service departments with thousands of representatives and specialized subdivisions with employees focused on individual areas of customer service (e.g., sales, retention, billing, tech and accessibility). Moreover, given the substantial volume of calls received, large MVPDs often give their customers multiple ways to receive customer service assistance, whether via phone, email, chat, or social media, and initially route customers to the appropriate generalist or specialist using an automated menu tree. In contrast, ACA members’ customer service departments have small staffs and often a low volume of calls, and it is not uncommon for ACA members to prefer having only one dedicated customer service telephone number for all incoming calls that would be answered live by a representative of the company.² Moreover, while ACA members may sometimes be unable to provide immediate or same-day answers to issues of first impression, these providers will often go the extra mile in researching the matter and helping their customer resolve it, such as by making a home visit.

² For small operators with limited staff, the alternative to having a single number may be to offer dedicated numbers that ring to specific employees who may or may not be at their desks at the time of the call.

Given differences between the provision of customer service by large and small MVPDs, and the fact that there is no evidence that smaller MVPDs are failing to provide adequate customer service with respect to video description, ACA urges the Commission not to impose any prescriptive customer service obligations on smaller MVPDs, or at a minimum not to impose the same rules on these operators that they impose on larger MVPDs. Small MVPDs and their customers, including those who rely upon video description, will be best served by allowing the small provider flexibility to determine how best to serve their customers, rather than indifferently forcing them to provide customer service in the exact same way as larger providers, when many smaller providers are not structured to provide customer service in the same way.

Programming Guide Metadata. On the question of how consumers can best learn what video described programming is available, ACA representatives reiterated ACA's position that a single centralized repository of information about available video described programming is the best means making this information known to consumers. Such a clearinghouse of information could be populated by the parties who add video description to programming or program guides and be maintained by the Commission or other third party. This approach would be more efficient and useful than requiring hundreds of individual MVPDs, who have no unique means of determining what programming will be video described, to gather, maintain, and make available similar, if not identical lists, to their customers.³ This approach would also be more consistent with the positions of the American Council of the Blind and American Foundation for the Blind.⁴

Multiple Audio Streams. ACA representatives also discussed industry progress toward the provision of multiple audio streams due to equipment upgrades/replacements, making it technically easier to enable access to video description than it is today where operators generally have only two available audio streams. Consistent with its comments, ACA reiterated that the MVPD industry is investing in hardware and software solutions that will over time allow subscribers to receive multiple audio streams.⁵ ACA also noted that the Video Description Working Group of the Disability Advisory Committee is studying the matter, suggesting that Commission action now is neither necessary nor advisable.

Video Described VOD Programming. ACA representatives stressed that a requirement to provide video description with VOD programming over QAM infrastructure would be extremely burdensome for smaller operators with limited resources,⁶ especially for smaller MVPDs who are

³ ACA Video Description Comments at 9.

⁴ *Id.* The American Council of the Blind ("ACB") explained in its comments that it currently relies on a wide variety of sources to collect information on video described programming, and "it would be a benefit to have a single repository for information on currently available audio-described video content." *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Comments of the American Council of the Blind at 3 (filed Jun. 23, 2016). ACB's position is echoed by its 2016 Resolution, which states: "Be it further resolved that this organization ask the FCC to encourage and support the establishment of a centralized supplemental resource listing all audio-described content, including content made available in movie theaters, on DVDs, or through Internet streaming services." Requiring individual MVPDs to provide this information would not resolve difficulties that persons with vision disabilities have experienced in obtaining information about video described programming. *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Reply Comments of the American Council of the Blind at 4 (filed Jul. 25, 2016).

⁵ ACA also reviewed the technical challenges that cable operators must overcome, and explained why these barriers are best addressed through the marketplace rather than through regulation. See ACA Video Description Comments at 5.

⁶ See ACA Video Description Reply Comments at 4-5.

facing declining video revenues and no longer investing in their VOD platform because they cannot effectively compete in the VOD market against over-the-top providers, like Netflix, Amazon, and Hulu. MVPDs who are investing in their VOD platform generally are migrating to an Internet Protocol (“IP”) VOD service, a platform more friendly to their customers with vision disabilities. ACA also noted the lack of record support showing a need for a video description requirement for VOD offerings.⁷

User Guide 2nd FNPRM – Closed Captioning Settings

Finally, ACA discussed the Commission’s proposal to require ready consumer access to display settings for closed captioning for apparatus covered by the Television Decoder Circuitry Act (“TDCA”).⁸ ACA representatives reiterated their view that neither the CVAA nor the TDCA provide the Commission with authority to impose mandates regarding accessibility of display settings for closed captioning on user interfaces, and that neither Act provides the Commission with authority to impose such mandates on MVPDs.⁹

The TDCA, codified at Communications Act Sections 303(u) and 330(b), requires that television receivers and other apparatus contain circuitry to decode and display closed captioning, and directs that the Commission’s “rules shall provide performance and display standards for such built-in decoder circuitry or capability designed to display closed captioned video programming.”¹⁰ In the past, the Commission has interpreted the decoder mandate to rest solely on television and apparatus manufacturers.¹¹ The existing digital television closed captioning decoder rule that requires an option for viewers to choose closed captioning settings – Section 79.102(t) – only applies to manufacturers. ACA pointed out that despite the fact these TDCA obligations have not previously been imposed on MVPDs, all MVPD customers have benefited from these rules for decades as MVPDs have deployed set-top boxes with closed captioning decoders and accessible functionality related to close captioning to their customers as they came on the market and as older, non-compliant boxes reached the end of their lifespan and were replaced.

⁷ *Id.* at 4.

⁸ See 2015 User Interface 2nd FNPRM, ¶ 33; 47 U.S.C. § 303(u)(1) (requiring that “apparatus designed to receive or play back video programming transmitted simultaneously with sound” contain circuitry to decode and display closed captioning).

⁹ See ACA User Interface Reply Comments at 2-5 (TDCA); *Accessibility of User Interfaces, and Video Programming Guides and Menus, Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-108 and 12-107, Reply Comments of the American Cable Association at 6-7 (filed Mar. 20, 2014) (CVAA).

¹⁰ 47 U.S.C. § 303(u)(1); 2016 User Interface 2nd FNPRM, ¶ 34.

¹¹ See, e.g., *Closed Captioning Requirements for Digital Television Receivers, Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Report and Order, 15 FCC Rcd 16788 (2000). Video programming distributors were originally subjected solely to pass-through obligations under Section 713. For example, the existing closed captioning decoder requirements for digital apparatus designed to receive or play back video programming transmitted simultaneously with sound under Section 79.103(a) of the Commission’s Rules apply by their terms solely to apparatus themselves, which places the onus of compliance of persons who manufacture or import such devices, rather than MVPDs who lease or distribute them. See 47 C.F.R. § 79.103(a) (“Effective January 1, 2014, all digital apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size must be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming pursuant to the provisions of this section[.]”).

ACA discussed several reasons why the Commission should not impose an obligation on MVPDs to ensure the accessibility of closed captioning display settings. First, as noted above, the Commission lacks statutory authority under the TDCA to impose such obligations on MVPDs.¹² Second, given that the Commission has succeeded in satisfying statutory goals in the past by imposing TDCA-related obligations solely on television and apparatus manufacturers, to achieve its stated goals in this proceeding, it need not now test the far reaches of its statutory authority by imposing new obligations on MVPDs.¹³ Finally, imposing these requirements on MVPDs, particularly smaller MVPDs, would inflict unreasonable burdens, including new compliance obligations on parties that have no control or influence over the features and functions contained within the set-top boxes they deploy to their customers that enable manipulation of closed captioning display settings.

ACA representatives stressed that, should the Commission nonetheless require MVPDs to ensure ready access closed captioning display settings, it must make clear that any new obligation on MVPDs¹⁴ applies solely to navigation devices purchased after a future certain date, and not to any existing devices already deployed to their customers or in the operator's inventory.¹⁵ Furthermore, since MVPDs with 400,000 or fewer subscribers lack leverage with the vendors they must rely upon to ensure compliance with such an obligation,¹⁶ the Commission should grant these MVPDs at least 18 months in addition to that afforded manufacturers and larger MVPDs to come into compliance.¹⁷

¹² Had the Commission possessed such authority under the TDCA, it likely would have utilized it in the past.

¹³ 2016 User Interface 2nd FNPRM, ¶ 34.

¹⁴ At a minimum, the Commission should clarify that any obligation imposed on MVPDs to ensure the accessibility of closed captioning display settings does not also obligate MVPDs who do not furnish navigation devices to their subscribers to do so solely for the purpose of complying with this mandate. The Commission included a similar clarification regarding rules adopted pursuant to Section 205 of the CVAA in its 2013 User Interface Order with respect to the obligation to provide accessible user guides and interfaces for a cable channel providing programming listings, often in the form of a scrolling grid, via equipment located in the cable headend rather than a navigation device, and to MVPDs that do not provide navigation devices at all to subscribers. See *Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, ¶ 44, n.156 (2013) ("2013 User Interface Order").

¹⁵ These new obligations should also not apply to navigation devices that are currently deployed in customers' homes, are reclaimed due to a subscriber termination or the return of a navigation device, and then redeployed to new customers.

¹⁶ See 2013 User Interface Order, ¶ 115.

¹⁷ Given that MVPDs with more than 400,000 and fewer than one million subscribers also lack leverage, the Commission should entertain individual waiver requests from such MVPDs for a limited extension of time to comply, if a requesting operator can demonstrate that it attempted in good faith to comply with the new rules by the extended deadline, but that it could not feasibly do so. Such a showing should include a detailed factual statement describing the steps the operator has taken to comply with the new rule's requirements, an estimate of how long it will take the operator to comply, supported by appropriate documentation, and a corroborating affidavit by an officer or director of the operator, pursuant to Section 1.16 of the rules. 47 C.F.R. § 1.16. The Commission should delegate to the Media Bureau authority to consider such requests. This proposed waiver process for individual requests for a limited extension of time to comply is based upon a similar waiver process that the Commission has made available to operators with more than 400,000 subscribers and fewer than two million subscribers concerning compliance with obligations contained in a 2013 Report and Order in which the Commission adopted accessibility rules for "digital apparatus and navigation devices used to view video programming." See 2013 User Interface Order, ¶ 117, n.469.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



Barbara Esbin

cc: Matthew Berry
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